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TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

JUL 27 2007

T:EP:RA:T:A2

In re:

Company =  
Prior Company =  
Prior Plan =  
Date 1 =  
Date 2 =  
Date 3 =  
Date 4 =  
Date 5 =  
Date 6 =  
Date 7 =  
Date 8 =  
Date 9 =  
Date 10 =  
Date 11 =  
Date 12 =  
Year 1 =  
Year 2 =  
Amount 1 =  
Amount 2 =  
Amount 3 =  
Amount 4 =

Dear

This letter is in response to your request for a ruling concerning the Plan which was submitted by your authorized representative on November 6, 2006.

The Company was a sales and service organization that sold digital finishing products and services to retailers and professional photo finishing labs. On Date 1, the Company purchased certain assets and assumed certain liabilities from the Prior Company. In connection with this transaction, assets and liabilities of the Prior Plan were spun-off to the Plan. The Company is not related to the Prior Company.

The Plan is a single-employer, defined benefit pension plan established by the Company on Date 2, as a spin-off of the Prior Plan. The latest determination letter received by the Plan is dated Date 4. Effective Date 5, the Plan was amended to fully vest all participants in their accrued benefits, provide for single-sum distributions, and to permit participants to elect immediate commencement of their benefit upon terminating from employment.

During the 2<sup>nd</sup> quarter of Year 1, the Company's foreign parent company filed for bankruptcy. As a result of this filing, the Company was forced to wind down operations and close. As a result, the Company sought to pursue the standard termination of the Plan and asked the enrolled actuary servicing the plan to calculate the amount necessary to fully fund the Plan. The actuary used conservative, but reasonable, actuarial assumptions in calculating the amount of this contributions. The calculations were based on the best-available data, but the data did not include Plan earnings for Year 1 or audited pay histories. The participants eligible for single-sum distributions from the Plan included all of the participants actively employed by the Company as of Date 3. Based on the actuary's calculations, the Company made contributions of Amount 1 on Date 6, and Amount 2 on Date 7, totaling Amount 3. Effective Date 8, the Company terminated the Plan. During the 4<sup>th</sup> quarter of Year 1 and the 1<sup>st</sup> quarter of Year 2, all the remaining employees of the Company were terminated except for 3 employees who are currently assisting in the closing of the Company.

On Date 9, the Company filed Form 500 (Standard Termination Notice) with the Pension Benefit Guaranty Corporation ("PBGC"). On Date 10, the PBGC acknowledged receipt of the Form 500 and indicated that if they did not issue a Notice of Noncompliance within 60 days, the Company could begin paying out benefits. Based on discussions with the PBGC, the Company was permitted to make distributions prior to the expiration of the 60-day period. On Date 11, the Company made the final distribution from the Plan. The Company also paid all Plan-related expenses from the Plan trust to the extent permitted by law.

As of Date 12, the surplus amount in the Plan was Amount 4. This surplus was the result of the actuary servicing the Plan using conservative estimates of the amount

necessary to satisfy all plan liabilities. Consequently, the estimate of the amount necessary to satisfy plan liabilities was greater than the actual benefit liabilities of the Plan once all benefits were paid. Hence, the Plan was over funded at that time. The amount of the over funding will be returned to the Company.

Accordingly, you have asked us to rule that (1) the return to the Company of Amount 4 will not violate section 401(a)(2) of the Internal Revenue Code ("Code"), and (2) the return to the Company of Amount 4 does not constitute an employer reversion under section 4980 of the Code.

Section 401(a)(2) of the Code generally prohibits, prior to the satisfaction of all liabilities with respect to employees and beneficiaries under the trust, the diversion of trust assets for purposes other than for the exclusive benefit of the employees or beneficiaries for whom an employer maintains a qualified pension plan.

Section 1.401(a)-2 of the Income Tax regulations ("regulations") provides that section 1.401-2, a regulation promulgated prior to the Employee Retirement Income Security Act of 1974 ("ERISA"), provides rules under section 401(a)(2) of the Code and that regulation is applicable unless otherwise provided.

Section 1.401-2 of the regulations provides rules under section 401(a)(2) of the Code for the impossibility of diversion under the trust instrument. Section 1.401-2(b)(1) provides that the intent and purpose in section 401(a)(2) of the Code of the phrase "prior to the satisfaction of all liabilities with respect to employees and their beneficiaries under the trust" is to permit the employer to reserve the right to recover at the termination of the trust, and only at such termination, any balance remaining in the trust which is due to erroneous actuarial computations during the previous life of the trust. A balance due to an "erroneous actuarial computation" is the surplus arising because actual requirements differ from the expected requirements even though the latter were based upon previous actuarial valuations of liabilities or determinations of costs of providing pension benefits under the plan and were made by a person competent to make such determinations in accordance with reasonable assumptions and correct procedures related to the method of funding.

Section 404 of the Code provides for the deduction for contributions of an employer to a qualified plan. Section 404(a)(1)(D)(i) provides that in the case of any defined benefit plan, except as provided in regulations, the maximum amount deductible under section 404(a) shall not be less than the unfunded current liability determined under section 412(l). Section 404(a)(1)(D)(iv) provides that for certain terminating plans, the limitation on the amount deductible under section 404(a)(1)(D)(i) is the amount required to make the plan sufficient for benefit liabilities.

Section 4980(a) of the Code provides for a tax of 20 percent on the amount of any reversion of plan assets to the employer from a qualified plan. Section 4980(b) provides

that the tax imposed by section 4980(a) shall be paid by the employer maintaining the plan.

Section 4980(c)(1)(A) of the Code provides, in part, that the term "qualified plan" means any plan meeting the requirements of section 401(a) or section 403(a) of the Code other than a plan maintained by an employer if such employer has, at all times, been exempt from tax under subtitle A. Such term shall include any plan which, at any time, has been determined by the Secretary of the Treasury to be a qualified plan.

Section 4980(c)(2)(A) of the Code defines the term "employer reversion" to mean the amount of cash and the fair market value of other property received (directly or indirectly) by an employer from the qualified plan.

Section 4980(c)(2)(B) of the Code provides in pertinent part that the term "employer reversion" shall not include (i) except as provided in regulations, any amount distributed to or on behalf of any employee (or his beneficiaries) if such amount could have been so distributed before termination of such plan without violating section 401, or (ii) any distribution to the employer allowable under section 401(a)(2) in the case of a plan other than a multiemployer plan, by reason of mistake of fact, or in the case of any plan, by reason of the failure of the plan to initially qualify or the failure of the contributions to be deductible.

Because the Plan has received a favorable determination letter, the Plan has been determined to be a qualified plan under section 401(a) of the Code.

The Company made contributions totaling Amount 3 to the Plan in order to effect the standard termination of the Plan. This Amount 3 was determined by the enrolled actuary servicing the Plan using conservative assumptions. Although the actuary used reasonable assumptions and followed the correct procedures related to the method of funding, the actual requirements to fully fund the Plan differed from the expected requirements. As a result Amount 4 remains in the Plan after all the Plan's benefit liabilities are satisfied. Amount 4 would be considered the result of erroneous actuarial computations within the meaning of section 1.401-2(b)(1) of the regulations. The return of this portion of the contribution to the Company will not occur until after the satisfaction of all liabilities with respect to employees and beneficiaries of the trust of the plan. Accordingly, the return to the Company of Amount 4 will not violate section 401(a)(2) of the Code.

Amount 4 is not deductible under section 404 of the Code because it exceeded the amount required to make the plan sufficient for benefit liabilities. Accordingly, Amount 4 is described in section 4980(c)(2)(B)(ii) of the Code, and thus the return to the Company of Amount 4 does not constitute an employer reversion under section 4980 of the Code.

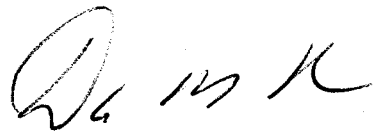
This ruling only addresses the two issues that we have ruled upon. In particular, we are not expressing any opinion as to deductibility of any particular contribution to the Plan under section 404(a) of the Code.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

We have sent a copy of this letter to the Manager  
the Manager and to your  
authorized representative pursuant to a power of attorney on file in this office.

If you require further assistance in this matter, please contact

Sincerely yours,

A handwritten signature in dark ink, appearing to read "D. M. Prestia", is written above the typed name.

Donna M. Prestia, Manager  
Employee Plans Actuarial Group 2